



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

EPA Region 5 Records Ctr.



386903

George V. Voinovich
Governor

July 16, 1991

CERTIFIED MAIL

Louis A. DiPaolo
Plant Manager
Satra Concentrates, Inc.
P. O. Box 536
Steubenville, Ohio 43952

Dear Mr. DiPaolo:

This letter is sent in response to your letter to Ohio EPA dated August 2, 1989, regarding the regulatory status of K091 waste at Satra's facility located near Steubenville on Jefferson County Road. Ohio EPA regrets the delay in responding to your letter.

Ohio EPA agrees with Satra's assertion that, on August 2, 1989, K091 waste was not listed in Ohio. The federal listing was effective in Ohio from March 13, 1989, until Ohio received final RCRA authorization on July 28, 1989. See 54 Fed Reg. 15316, 15338 (April 17, 1989) (listing effective only in unauthorized states). When Ohio received RCRA authorization, K091 waste was not yet listed in the Ohio Administrative Code ("OAC") as a hazardous waste. However, on December 30, 1989, the Ohio EPA listing of K091 waste in OAC rule 3745-51-32 became effective, and any active management of K091 waste after that date is subject to regulation under Chapter 3734. of the Ohio Revised Code, and the regulations adopted thereunder.

Satra's excavation of the landfill containing K091 waste would be considered active management of the waste and would subject Satra to regulation under Ohio's hazardous waste laws. It is Ohio EPA's understanding that Satra did not actively manage the waste piles containing K091 waste after December 30, 1989. Therefore, it appears that the undisturbed K091 waste presently is not subject to the hazardous waste management regulations. If, however, Satra begins to actively manage the K091 waste in the future, then the K091 waste will become subject to such regulation.

Please note that K091 waste is still a listed waste, regardless of whether or not it is being actively managed, and that Satra is therefore liable for any area contaminated or threatened to be contaminated by the waste. In addition, K091 waste remains listed in Ohio despite a remand to the U.S. EPA of the rulemaking that listed K091 waste on the federal level. See American Mining Congress v. EPA, ___ F.2d ___, 31 ERC 1935 (D.C. Cir 1990).



Printed on recycled paper

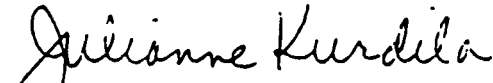
Louis A. DiPaolo
Satra Concentrates, Inc.
Page 2

09 JUN 87 11:47

Because Ohio is not under the jurisdiction of the Court of Appeals for the District of Columbia Circuit, the K091 listing in Ohio remains intact at the present time.

I trust that this letter clearly states the Ohio EPA's position on the regulatory status of K091 waste at Satra's facility. If you have any questions, please contact me at (614) 644-3037.

Sincerely,


Julianne Kurdila
Staff Attorney

JK/nlm

cc: Linda Welch, Chief, DSHWM
Michael A. Savage, Asst. Chief, DSHWM
Pamela S. Allen, Manager, HWES, DSHWM
Brian M. Babb, Legal Supervisor
Dave Chenault, DSHWM, SEDO
Ed Kitchen, Manager, TAS, DSHWM